

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Inquiry Concerning Use of Portions of)	
Returned 2 GHz Mobile Satellite Service)	IB Docket No. 05-220
Frequencies)	
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)	

COMMENTS OF GLOBALSTAR LLC

Globalstar LLC (“Globalstar”) submits the following comments in response to the Commission’s *Public Notice* seeking comment on its proposal to modify the 2 GHz Mobile Satellite Service (“MSS”) spectrum reservations of ICO Satellite Services (“ICO”) and TMI Communications and Company Limited Partnership (“TMI”) pursuant to section 316 of the Act.^{1/} As discussed below, given the unresolved status of Globalstar’s 2 GHz MSS authorization, which the International Bureau erroneously cancelled in January 2003, any proposed change to the 2 GHz MSS licenses held by ICO and TMI in a manner that would affect the 2 GHz MSS spectrum comprising Globalstar’s 2 GHz authorization is premature.

I. Background

Globalstar is now in its sixth year of providing MSS voice and data services. Globalstar service is currently available in all areas of the world except central and southern Africa, Southeast Asia, and the Indian subcontinent, regions in which Globalstar is currently negotiating to expand coverage. As of June 2005, Globalstar had 153,000

^{1/} “Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies,” Public Notice, FCC 05-133 (rel. June 29, 2005).

subscribers in more than 120 countries, which reflects an average annual growth rate of 45 percent during Globalstar's first five years of service, and an astounding increase of 50 percent in the last 18 months alone. Globalstar is committed to meeting the needs of its current and future customers for satellite-based voice and data telecommunications services anywhere at any time.

Consistent with this vision, in April 2005 Globalstar applied for ancillary terrestrial component ("ATC") authority in order to enable it to make more efficient and intensive use of its assigned spectrum, and to expand and broaden its customer base.^{2/} At present, Globalstar is the only MSS provider capable of implementing ATC immediately, and upon the grant of its ATC applications, Globalstar is poised to bring to reality all of the benefits that the Commission envisioned when it adopted rules authorizing MSS operators to incorporate an ATC into their service offerings. In addition to seeking ATC authority, Globalstar also has a pending application to deploy an additional gateway in Sebring, Florida, and hopes in the near future to add another gateway in Alaska. These additional gateways, in combination with ATC authority, will enable Globalstar dramatically to improve its MSS service offerings and better meet the needs of its customers, which include, among others, numerous emergency responders, the military, and other government agencies.

Without sufficient spectrum, however, Globalstar's plans to expand and enhance its valuable MSS service offerings may be frustrated. In particular, the spectrum

^{2/} See Globalstar LLC Request for Authority to Implement an Ancillary Terrestrial Component for the Globalstar Above 1 GHz, of Big LEO, Mobile Satellite Service (MSS) System (Call Sign ES2115); Globalstar USA LLC Application for Modification of Blanket License Authorization for Mobile Earth Station Terminals (Call Sign E970381); FCC File Nos. SAT-MOD-20050301-00054 and SES-MOD-20050301-00261 ("ATC Applications").

originally assigned to Globalstar at 2 GHz is essential if Globalstar is to continue to expand its customer base and service offerings and ensure that its MSS business remains viable. Globalstar's pending petition for reconsideration of the erroneous cancellation of its 2 GHz license is thus critical to Globalstar's expanding service plans.

II. Modification of ICO's and TMI's Spectrum Reservations Is Premature in Light of the Unresolved Status of Globalstar's 2 GHz Authorization

The Commission's proposal to modify ICO's and TMI's 2 GHz spectrum reservations threatens to prejudice Globalstar's pending petition for reconsideration^{3/} and impair Globalstar's future ability to provide service.^{4/} In 2003, the International Bureau erroneously and unlawfully cancelled Globalstar's 2 GHz MSS license,^{5/} an action that Globalstar has vigorously challenged.^{6/} As Globalstar has argued in its pleadings contesting the cancellation of its license, the Bureau erred in concluding that a satellite construction contract incorporating space station license modifications that are reflected in a simultaneously filed modification application cannot meet the satellite construction milestone if the Commission denies the modification application.^{7/} As the Bureau made

^{3/} Globalstar, Petition for Reconsideration, File Nos. SAT-LOA-19970926-00151/52/53/54/56, *et al.* (filed July 26, 2004) ("Globalstar Petition for Reconsideration").

^{4/} See Letter from William T. Lake, Counsel to Globalstar LLP, to Marlene H. Dortch, Secretary, FCC, IB Docket Nos. 99-81, 02-34, 00-246 & ET Docket No. 00-258 (filed June 20, 2005) ("Lake Letter"). See also Globalstar LLP, Comments to be filed in Docket No. 05-221. Furthermore, the proposed 2 GHz MSS spectrum redistribution is a modification not only of ICO and TMI licenses, but also of Globalstar's license awaiting resolution on petition for reconsideration. Until that petition is decided, Globalstar is entitled, at a minimum, to the same notice and comment opportunity granted to ICO and TMI pursuant to Section 316 of the Communications Act. See 47 U.S.C. § 316.

^{5/} Memorandum Opinion and Order, *Application of Globalstar, L.P., For Modification of License for a Mobile-Satellite Service System in the 2 GHz Band*, 18 FCC Rcd 1249 (2003) ("Modification of License").

^{6/} See Reply of Globalstar LLC and Globalstar Satellite, L.P., File Nos. SAT-LOA-19970926-00151/52/53/54/56, *et al.* (filed Aug. 20, 2004) ("Globalstar Reply to Opposition").

^{7/} See *Modification of License* at 1255 ¶ 13.

clear in a contemporaneous ruling involving another operator, a satellite licensee should not be penalized where it misses a milestone because its noncontingent contract conforms to a pending application to modify its licenses, and not to the license itself.^{8/} The Bureau specifically acknowledged that licensees are generally permitted to modify their satellite systems,^{9/} and that a construction contract that incorporates a milestone schedule proposed in a pending application for license modification does not present a “material deficiency” in the construction schedule where the license modification is granted.^{10/} Consistent with this policy, the Bureau recently approved ICO’s application for the modification of its 2 GHz license, which included modifications that delayed a number of system construction milestones.^{11/}

Accordingly, when the Commission denied Globalstar’s application to modify its license, it should have afforded Globalstar an opportunity promptly to modify its noncontingent contract to reflect the Commission’s action.^{12/} Moreover, the Commission was required to afford Globalstar notice and opportunity for a hearing under section 312 of the Act and sections 1.91 and 25.160 of the Commission’s rules before canceling its 2

^{8/} See Memorandum Opinion and Order, *Teledesic LLC Application for Authority To Construct, Launch and Operate a Ka-Band Satellite System in the Fixed Satellite Service*, 17 FCC Rcd 11263, 11265 ¶¶ 7-10 (2002) (“*Teledesic LLC*”).

^{9/} *Id.*

^{10/} See Order and Authorization, *Applications of the Boeing Company*, 18 FCC Rcd 12317 ¶ 28 n. 56 (2003) (“*Boeing Applications*”).

^{11/} See Memorandum Opinion and Order, *ICO Satellite Services G.P., Application for Modification of 2 GHz LOI Authorization*, File No. SAT-MOD-20050110-00004, DA 05-1504 (rel. May 24, 2005).

^{12/} *Id.*; see 47 U.S.C. § 316; *Boeing Applications* at 12327-28 ¶ 28 n.56; *Teledesic LLC*, 17 FCC Rcd 11263, 11265 ¶¶ 7-10 (2002).

GHz authorization.^{13/} Any ambiguity that the Commission perceived about Globalstar's intentions or ability to proceed^{14/} was erroneous then and is utterly unfounded now, when Globalstar is manifestly ready and able to implement its 2 GHz system in conformity with aggressive milestones. The Globalstar satellite system has survived Globalstar, L.P.'s Chapter 11 case intact, and the new owners have infused sufficient financial resources to move forward with the construction of its 2 GHz system. Indeed, Globalstar is arguably the most viable 2 GHz MSS provider; it is one of only two (with Iridium) providers currently offering MSS services, and neither of the other 2 GHz licenses currently provides MSS service. Globalstar has both the intent and the financial ability to proceed with its 2 GHz business plan.^{15/}

Although Globalstar understands the need to ensure that all 2 GHz MSS spectrum is put to use, given the current circumstances, any decision to redistribute 2 GHz MSS spectrum to the existing 2 GHz MSS licensees prior to the final resolution of Globalstar's rights in its 2 GHz authorization could also unfairly prejudice both ICO and TMI. Specifically, any modification to the spectrum reservations of ICO and TMI would be virtually meaningless upon the revival of Globalstar's 2 GHz authorization, and thus would work counter to the long-term interests of ICO and TMI. Today, each of the

^{13/} See 47 U.S.C. § 312; 47 C.F.R. §§ 1.91 and 25.160; Globalstar Petition for Reconsideration at 12-16; Globalstar Reply To Opposition at 2-7.

^{14/} See Memorandum Opinion and Order, *Emergency Application for Review and Request for Stay of Globalstar, L.P.*, 19 FCC Rcd 11548, 11561-62 ¶ 31 (2004) (The Commission recognized that the Bureau was "not convinced by Globalstar's . . . statements of its intent to proceed" and had "questions regarding whether Globalstar has the financial ability to proceed with its business plan.").

^{15/} See Lake Letter. Globalstar intends to launch and operate one or more GSO satellites to provide 2 GHz MSS service.

proposed 2 GHz MSS systems is at a stage of planning and development where the amount and segment of spectrum available must be clearly established. Proceeding with the assumption that any harm to Globalstar can be remedied after the resolution of Globalstar's petition for reconsideration and possible litigation not only undermines Globalstar's future ability to operate in the 2 GHz band, but also casts doubt on the permanence of any spectrum redistribution – and worse, could lead to expensive system redesign and delay as the licensees may have to work around another redistribution. Any decision on 2 GHz MSS spectrum reservations thus should be postponed until Globalstar's rights to the spectrum at issue are finally determined.

III. Any Decision To Modify the Existing 2 GHz MSS Spectrum Reservations without Taking into Account Globalstar's Interests Would Threaten the Future of MSS at 2 GHz

The Commission's decision to allocate spectrum at 2 GHz for MSS service was integral to its plan to ensure that MSS would be viable and robust, and that MSS operators could offer competitive service and meet underserved and unserved needs.^{16/} In allocating the 2 GHz spectrum to MSS, the Commission stated, "2 GHz MSS systems will . . . promote development of regional and global communications to unserved communities in the United States, its territories and possessions."^{17/} The Commission specifically recognized that satellites offered "excellent technology for delivering basic and advanced telecommunication services" to unserved communities and regions,^{18/} and

^{16/} Report and Order, *Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 15 FCC Rcd 16127 (2000) ("2 GHz MSS Order").

^{17/} *Id.* at 16128 ¶ 1.

^{18/} *Id.* at 16144-45 ¶ 32.

the Commission has repeatedly recognized that MSS is uniquely positioned to meet the needs of emergency responders, law enforcement, and government agencies.^{19/}

The Commission originally authorized eight licensees to operate 2 GHz MSS systems.^{20/} Now, nearly five years after the initial allocation of the 2 GHz MSS spectrum, market forces have left only three viable 2 GHz MSS providers in existence: ICO, TMI, and Globalstar. The proposed redistribution action, which would grant ICO and TMI each one third of the available 40 MHz of 2 GHz MSS spectrum without taking into account the status of Globalstar's 2 GHz authorization, could further narrow the MSS marketplace and foreclose the public interest benefits that would result from authorizing a third viable competitor to provide MSS service. Indeed, instead of further promoting the efficient use of spectrum and fostering an environment for growth in mobile satellite communications, the Commission's proposed actions here would unfairly exclude and prejudice one of the few viable 2 GHz MSS providers and run counter to the Commission's vision of establishing a competitive, robust 2 GHz MSS marketplace. The Commission set three as the sufficient number of licensees for efficient use of a

^{19/} See, e.g., Report and Order and Notice of Proposed Rulemaking, *Flexibility for the Delivery of Communications by Mobile Satellite Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, 18 FCC Rcd 1962 (2003).

^{20/} 2 GHz MSS Order; Order and Authorization, *Application of Celsat America, Inc.; Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, 16 FCC Rcd 13712 (2001); Order and Authorization, *Application of Globalstar, L.P. for Authority to Launch and Operate a Mobile-Satellite Service System in the 2 GHz Band*, 16 FCC Rcd 13739 (2001); Order, *ICO Services Limited; Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, 16 FCC Rcd 13762 (2001); Order and Authorization, *Application of Iridium LLC; Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, 16 FCC Rcd 13778 (2001); Order and Authorization, *Mobile Communications Holdings, Inc.; Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, 16 FCC Rcd 13794 (2001); Order, *TMI Communications and Company; Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, 16 FCC Rcd 13808 (2001); Order and Authorization, *Constellation Communications Holdings, Inc.; Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System*, 16 FCC Rcd 13724 (2001); Order and Authorization, *The Boeing Company*;

frequency band, but here postulates a regulatory outcome that would exclude a third.^{21/}

Three 2 GHz MSS providers will not only promote efficient use of the spectrum, but also will enable MSS providers to serve better the important public interests that guided the Commission's decision to allocate spectrum to MSS in the first place.^{22/}

Despite the public interest benefits that the Commission has recognized MSS services can offer, its recent actions severely threaten the future of MSS. In contrast to the Commission's statements and actions in support of MSS, in 2003 the Commission slashed the available 2 GHz MSS spectrum by 30 MHz.^{23/} With its current proposal to modify ICO's and TMI's spectrum reservations in a manner that could foreclose a viable third MSS operator at 2 GHz, the Commission is on the verge of taking further action that could forever forestall competition and progress in the 2 GHz MSS marketplace.

Narrowing the current field of 2 GHz MSS providers to only two licensees may appear to be a convenient way to free up the remaining spectrum for other purposes; however, this action would be improper without action on Globalstar's petition for reconsideration, and would be nearsighted in jeopardizing all of the public interest benefits the Commission has recognized MSS can offer.

Concerning Use of the 1990-2025/2165-2200 MHz and Associated Frequency Bands for a Mobile-Satellite System, 16 FCC Rcd 13691 (2001).

^{21/} See 47 C.F.R. § 25.157(g); *2 GHz MSS Order*.

^{22/} This result could be avoided if the Commission reserved the remaining one-third of the 2 GHz MSS spectrum for Globalstar under Globalstar's preexisting authorization. But the Commission has proposed quite different treatment of that spectrum. See "Commission Invites Comments Concerning Use of Portions of Returned 2 GHz Mobile Satellite Service Frequencies," Public Notice, FCC 05-134 (rel. June 29, 2005).

^{23/} See Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services*, 18 FCC Rcd 2223, 2239-40 ¶ 32 (2003).

Conclusion

The Commission should refrain from making any decisions with respect to the remaining 2 GHz MSS spectrum until it takes action on Globalstar's pending petition for reconsideration. Any action that would preclude Globalstar from being a third viable 2 GHz MSS competitor would irreparably injure Globalstar and would be contrary to the Commission's goals of creating a robust and competitive 2 GHz MSS marketplace.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Wm T. Lake", is written over a horizontal line.

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